IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 45 of 2004 (S/B)

Deepak Kumar & others …… Petitioners

Versus

State of Uttaranchal & others …… Respondents

Mr. Gopal Narain, learned counsel for the petitioners.
Mr. U.K. Uniyal, learned counsel for respondent No. 5.
Mr. K.P. Upadhyaya, learned Standing Counsel for the State.

Dated: 13th May 2004.

Hon'ble P.C. Verma, A.C.J.
Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for the issue of a writ in the nature of mandamus commanding the respondents to issue the appointment letters to the petitioners in order of merit and preference according to the select list.

Brief facts giving rise to the present writ petition are that the Public Service Commission, Uttaranchal (hereinafter referred to as Commission) published / issued an advertisement for holding Combined State Engineering Services Examination 2002 showing the vacancies for the post of Assistant Engineers (civil) in the Public Works Department and Assistant Engineers (Electrical / Mechanical) in Department of Rural Engineering Services and Rural Development & Panchayat Raj Departments. The vacancies were mentioned in the advertisement along with reservation.

Petitioners have stated that they have also submitted their applications to the Commission to participate in the examination of Combined State Engineering Services. According to the petitioners written examination was held by the Commission and the candidates who passed the written examination were called

for interviews for final selection. Petitioners have further submitted that before holding the interview the Commission called for preferences for appointment in various departments from the successful candidates of combined list. Thereafter, on 17.06.2003, the Commission issued a select list merit wise and on the basis of preferences given by the petitioners and other selected candidates. The same was sent to the Government for approval and thereafter appointment letters were issued to the successful candidates by the concerned departments. The contents of the select list issued by the Commission with respect to the petitioners are quoted below:

लेक सेवा आयोग उत्तरांचल

संख्या 017/अतिगोपन/अभि/2002–2000 दिनांक 17 जून 2003

lpuk

आयोग द्वारा सम्मिलित राज्य अभियंत्रण सेवा परीक्षा 2002 दिनांक 15 व 16 फरवरी 2003 को आयोजित की गयी थी तथा उक्त परीक्षा में समस्त अभ्यर्थियों का साक्षत्कार दिनांक 21 मई 2003 से 24 मई 2003 तक आयोजित किया गया था आयोग द्वारा प्रश्नगत परीक्षाा का अन्तिम परीक्षाफल निम्नलिखित श्रेष्ठताक्रम में विभागवार घोषित किया जाता है–

ykd fuekZ.k foHkkx mRrjkpy esa lgk;d vfHk;Urk ¼fl foy½

d:0l:0	vuqd:ekd	vH;FkhZ dk uke
37	58371	मुरलीधर
85	362	आनन्द प्रकाश (अ0जा0)
86	363	दीपक कुमार (अ0पि0व0)
88	944	मुनीष वर्मा (अ0जा0)
89	711	अरविन्द कुमार वर्मन (अ0जा0)

Ykd fuekZ.k foHkkx mRrjkpy esa lgk;d vfHk;Urk ¼fo|qr@;kf=d½

d:0l:0	vuqd:ekd	vH;FkhZ dk uke
44	2006	पंकज कुमार सिंह
45	762	वैभव सिंह
47	300	राजेश कुमार वर्मा

Learned counsel for the petitioners have made a grievance that on 20.02.2004 the Public Works Department issued letters for appointment according to the list sent by the Commissioner to the successful candidates totaling to 61 from the 92 successful

candidates against 92 vacancies. Similarly, on 12.02.2004 Department of Rural Engineering Services and Rural Development & Panchayat Raj Department have also issued appointment letters to the candidates who are lower in merit. The contents of the appointment letter are quoted below:

उत्तरांचल शासन
पंचायत एवं ग्रामीण अभियन्त्रण सेवा
संख्या 35 / पं0गा0अ0से0 अनु0 / 93(24) / 2003–04
देहरादून : दिनांक 12 फरवरी 2004

विज्ञप्ति / नियुक्ति

"लोक सेवा आयोग उत्तरांचल हरिद्वार द्वारा आयोजित सम्मिलित उत्तरांचल राज्य परीक्षा 2002 सके संयुक्त चयन एवं तत्पश्चात साक्षात्कार के आधार पर ग्रामीण अभियन्त्रण सेवा विभाग उत्तरांचल में नियुक्ति हेतु संस्तुत किये गये अभ्यर्थियों में से निम्नलिखित अभ्यर्थियों को सहायक अभियन्ता(सिविल) / यान्त्रिक के पद पर वेतनमान रु0 8000–275–13500 में निम्नलिखित शर्तों के अधीन नियुक्ति किये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।"

Petitioners have submitted that when they came to know that the appointment letters have been issued to the successful candidates without following the procedure of preference and the candidates who got less marks from the petitioners were shifted to the other departments while the petitioners who are higher in merit according to the merit list issued by the Commission, then the petitioners approached the higher authorities by making their grievance. Petitioners have submitted that the action of the Government, therefore, is wholly unreasonable.

A counter affidavit has been filed by the State wherein in paragraph No. 7 of the said counter affidavit it has been stated that the Public Works Department has made requisition to the Commission for conducting the examination on 08.02.2002. At that time the entry quota for direct recruits was 58.34% in the prevalent "United Provinces Services of Engineers (building and road branch) class 2 Rules 1936" (as amended). The State has

notified new service rules as on 25.04.2003 in which the direct entry quota is 50% of the total Cadre strength. The cadre strength for Assistant Engineer (Civil) is 193 and 19 for Assistant Engineer (E & M). Thus the direct quota for A.E(Civil) is 97 and A.E(E&M) is 10. Only 61 vacancies in Assistant Engineer (Civil) actually exist. Therefore, appointment letters to 61 candidates in order of merit and subject to reservation policy of the State Government have been issued vide order dated 20.02.2004. It is pertinent to state here that 33 optees of Uttaranchal Assistant Engineer(Civil) and three AE(Civil) [permanent resident of Haridwar district are serving in Uttaranchal against the direct entry quota. Likewise 06 Assistant Engineers (E&M) optees of Uttaranchal are serving in Uttaranchal.

It was further submitted by the State Government that in AE(E&M) no vacancy exists as on date, resulting no issuance of appointment order of Assistant Engineer(E&M). The Cadre allocation has not been finalized by the Government of India till date. Finally how many officers at Assistant Engineers level out of these optees will be allocated to the State of Uttaranchal by Government of India is not know.

The State Government has further submitted that as and when the vacancies anticipated at the time of advertisement are available the candidates from the select list shall be given appointment in order of merit and subject to the reservation policy of the State Government.

The respondents have carved out a new case in their counter affidavit against the terms of the advertisement made on 19th August 2002. The petitioners having been selected and their selection having also been approved as will appear from the select list published on 17th June 2003. therefore, as having been approved the same cannot be a matter of change so as to cause injustice to the petitioners.

In reply to the contents of the counter affidavit filed by the respondents, the petitioners have filed a rejoinder affidavit and it has been reiterated that single selection list of the Engineers were sent to the Government for approval and there is no reason not to issue appointment letters and the select list has to be accepted in toto.

The stand of the Government that the State has modified new service rules as on 25.04.2003 in which direct entry quota is 50% of the total cadre strength and cadre strength of the Assistant Engineer(Civil) in 193 and 19 for Assistant Engineer(E&M) and thus direct quota for the A.E.(Civil) is 97 and A.E(E&M) is 10 and only 61 vacancies in A.E(Civil) actually exists is against the advertisement. Total 89 vacancies towards A.E(Civil) and 03 vacancies towards A.E(E&M) has been shown towards Public Works Department and in other departments the vacancies have been shown as under:

क्र सं	विभाग का नाम	पद का नाम	कुल रिक्तियां	सामान्य	अनु0 जाति	अ0 ज0 जा0	अ0 पि0 व0
1	2	3	4	5	6	7	8
1	लोक निर्माण विभाग उत्तरांचल	(क) सहायक अभियन्ता (सिविल) (ख) सहायक अभियन्ता (विद्युत /यांत्रिक)	89 03	55 02	18 01	03 –	12 –
2	ग्रामीण अभियन्त्रण वन एवं ग्राम्य विकास विभाग	(क) सहायक अभियन्ता (सिविल) (ख) सहायक अभियन्ता (विद्युत) (ग) सहायक अभियन्ता (यांत्रिक)	11 01 04	7 – –	3 01 01	– – –	1 – –
3	ग्राम्य विकास एवं पंचायत राज	अभियन्ता (सिविल)	05	04	01	–	–

We are of the opinion that when the recommendations in accordance with the selection made were accepted by the State

Government, the selectees acquire vested right and their appointments have obtained finally. Moreso, part of the list having been accepted, the other candidates therefore have a right to seek writ of mandamus in pursuance of their approval by the Government.

In *Kumari Shrilekha Vidyarthi etc. Vs State of U.P.* and others reported in AIR 1991 S.C. 537, it has been held as under:

> *"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action in sine qua non to its validity and in this respect, the State cannot claim comparison with the private individual even in the field of contract. This distinction between the State and a private individual in the filed of contract has to be borne in the mind."*

We, therefore allow the writ petition. A writ of mandamus is issued directing the respondents to issue appointment letters in favour of the petitioners in pursuance of the approved selection list published on 17.06.2003.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dated: 13th May, 2004
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